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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,321	07/22/2003	Jung-Fu Cheng	4015-5072	7306
24112	7590	06/21/2006		EXAMINER
COATS & BENNETT, PLLC				DILDINE JR, R STEPHEN
P O BOX 5			ART UNIT	PAPER NUMBER
RALEIGH, NC 27602			2133	

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/624,321	CHENG, JUNG-FU	
	Examiner	Art Unit	
	R. Stephen Dildine	2133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 April 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-90 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-12,30-41 and 54-65 is/are allowed.
- 6) Claim(s) 13-16,27,42,52,53,66,68-70,72,78,79,86,88 and 89 is/are rejected.
- 7) Claim(s) 17-26,28,29,43-51,67,71,73-77,80-85,87 and 90 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 July 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13-16, 27, 42, 66, 68-70 and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al. (2002/0053058) who discloses method steps (“A method of transmitting packet data to a receiver”, abstract) and means or circuits (“receiver checks whether its buffer is empty (S11).” paragraph [0025]) and for transmitting a first version of a message (“In accordance with one illustrative embodiment of the present invention, an index representative of how much the first packet being transmitted” abstract, emphasis added) transmitting a second version of said message (“If the index is greater than or equal to the threshold value, the first packet transmitted is stored in a buffer and a receiver requests to transmit a second additional packet encoded with a lower code rate”, abstract, emphasis added) responsive to a changing transmission variable (“an index representative of how much the first packet being transmitted such as a signal-to-noise (Eb/No) ratio is compared to a predetermined threshold value” abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 86 and 88-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (2002/0053058) as applied to claims 13-16, 27, 42, 66, 68-70 and 72 above, and further in view of Classon et al. (2003/118031) who states in paragraph [0033] “Those skilled in the art understand that the suitable software and hardware for ensuring that transmissions between wireless communication devices 110, 112, 114 and base station 120 are accurate and reliable may be incorporated directly into the base station 120 instead of the mobile switching center 130. In this alternate embodiment, the system in FIG. 1 may be constructed without a single mobile switching center 130. In the absence of a mobile switching center 130, the base station would serve as the terminus for wireless data packets exchanges. Alternatively, the hardware/software providing reliability may be also being

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incorporated into a third entity such as a packet data support node. In this second alternative embodiment, neither the base station nor the mobile switching center would contain reliability hardware/software. The packet data support node may be inserted between base station 120 and mobile switching center 130. Alternatively, the packet data support node may be inserted between mobile switching center 130 and public switched telephone network 140. Yet another alternative would be to use the packet data support node to connect base station 120 directly to communication network 150. In this latter configuration, the packet data support node would serve as terminus for wireless data packets instead of mobile switching center 130" thereby showing that it is well known to those skilled in the art to use software to carry out method steps. Note that Lee et al. states at the end of his specification "Many alternatives, modifications, and variations will be apparent to those skilled in the art".

Claims 52-53 and 78-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (2002/0053058) as applied to claims 13-16, 27, 42, 66, 68-70 and 72 above, and further in view of Ott (6,182,264). These claims add the limitations that the transmitter is a base station and the receiver is a mobile terminal. Ott shows, by his Figure 2, that it is well known to those skilled in the art that, in digital communications, transmitters are commonly base stations and receivers are commonly mobile terminals. It is noted that Lee et al. states in paragraph [0028] "The present teachings can be readily applied to other types of apparatuses".

Applicant's arguments filed 27 April 2006 have been fully considered and are found to not be persuasive in regards to claims 13-19, 26-29, 42-53, 66-79, 86-90, which are directed to retransmission of a second version of the data, but do not recite use of a second retransmission protocol as argued by applicant.

Allowable Subject Matter

Claims 1-13, 30-41 and 54-65 are allowed.

Claims 17-26, 28-29, 43-51, 67, 71, 73-77, 80-85, 87 and 90 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter: applicant, in the remarks filed 27 April 2006, argues that the references do not select a retransmission protocol. This is correct with regard to some of the references cited in the office action mailed 25 January 2006). Applicant further argues that the term "retransmission protocol" does not include such things as an encoding scheme, error correction code length, code rate, the level of error protection, encoding ratio, type of FEC code. This argument is persuasive in view of the three definitions of "protocol" cited in this office action which are consistent with the examples (HARQ, Chase Combining, incremental redundancy, repetition ARQ etc.) given in applicant's specification.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Stephen Dildine whose telephone number is (571) 272-3820. The examiner can normally be reached on M - F 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decayd can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



R. Stephen Dildine

R. Stephen Dildine

R. Stephen Dildine
Primary Examiner
Art Unit 2133